

## EXECUTIVE SUMMARY

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Pursuant to the statutory obligations assigned to the Kansas Sentencing Commission under K.S.A. 74-9101, in FY 2005, the Commission carried out the following major activities: 1) presenting recommendations to the state legislature relating to modification and improvement of current sentencing guidelines; 2) providing the legislature and state agencies with prison bed-space impact assessments under any policy change related to sentencing guidelines; 3) processing statewide felony sentencing journal entries including both prison and nonprison guideline sentences, examining and conducting research on sentencing issues related to sentencing guidelines; 4) supervising and monitoring the implementation of Senate Bill 123 drug treatment programs including holding training seminars, processing and tracking treatment transactions and collecting treatment evaluation data; 5) producing annual prison population projections and custody classification forecasts for both Kansas Adult Correctional Facilities and Kansas Juvenile Correctional Facilities; 6) serving as an information resource to respond to national, state and county requests regarding sentencing data; 7) conducting training sessions on sentencing guidelines and various sentencing issues.

During FY 2005, a total number of 13,517 felony sentences were reported to the Commission, which increased by 3.6% over that of FY 2004. Of the total number of sentences, 5,741 were prison sentences and 7,776 were probation sentences. Nondrug sentences accounted for 67.5% (9,124

sentences) and drug sentences accounted for 32.5% (4,393 sentences).

### INCARCERATION SENTENCES

In FY 2005, 5,741 offenders were admitted to prison. Reviewing the characteristics of the offenders, the Commission noticed that males remained the predominant offender group, representing 89% of all offenders sentenced to prison, which is the same with that of FY 2004. More than 90% of the violent and sex offenses were committed by males, such as, the crimes of murder, burglary, robbery, battery, assault, possession of firearms and sex offenses. However, females were incarcerated more frequently for the offenses of forgery, false writing, criminal use of financial card and identity theft (pages 15 & 16). For drug crimes, male offenders were convicted of more offenses of drug sales and unlawful manufactures of controlled substance but female offenders committed more offenses of drug possession (page 18).

Racial analysis of the offenders admitted to prison in FY 2005 reveals that white offenders represented 65% of individuals incarcerated in state prisons, which indicated no percentage change from that in FY 2004. The offenders with Non-Hispanic origin accounted for 91%, which decreased by 0.9% compared with that of FY 2004 (91.9%). The highest incarceration rates for Caucasians (over 70%) were found in the offense categories of sex offenses, burglary, DUI, fleeing or eluding LEO, nonsupport of a child or spouse and traffic in contraband.

Nevertheless, African Americans were incarcerated more often (over 50%) for the crimes of murders and aiding felons (pages 15 & 16).

The largest percentage of incarcerated offenders (27.5%) was in the age group ranging from 31 to 40 years old at the time of admission to prison in FY 2005, which is consistent with those of previous years. As for the educational background of the offenders admitted in FY 2005, almost 54% of the offenders had attained either a high school diploma or GED equivalent.

### **PROBATION SENTENCES**

The Commission received a total number of 7,776 probation sentences in FY 2005. The analysis of the probation sentences discloses that burglary, DUI, theft and forgery were the top four offenses for nondrug probation offenders representing approximately 57% of the total nondrug crimes (page 24), which indicates an increase of 2% compared with that of FY 2004 (55%). The probation sentences for the crime of drug possession accounted for 65% of all drug offenders on probation, an increase of 2% over that of FY 2004 (63%, page 27).

The analysis on the criminal history categories of the offenders on probation in FY 2005 demonstrates that offenders with criminal history category I accounted for almost 33% of offenders on the nondrug grid and 36.4% of offenders on the drug grid. Approximately 88% of nondrug offenders fell within the presumptive probation boxes (Table 11), while 61.7% of probation drug offenders were sentenced within the presumptive probation boxes (Table 12). Meanwhile, only 4% of probation nondrug sentences were found to be within the designated border boxes

compared to 21.7% of probation drug sentences. This significant percentage difference indicates that drug sentences tend to be imposed to probation more frequently than do nondrug sentences when their offense types and offender criminal history categories fall within the border boxes. The data also indicates that downward dispositional departures were another primary source of non-prison sentences found on the drug grid.

### **DRUG SENTENCES**

Totaling 1,616, the number of drug incarceration sentences in FY 2005 decreased by 5.1% and 1.5% respectively when compared to those of FY 2004 and FY 2001. When individual drug grid severity levels were compared with those of FY 2004, all drug severity levels demonstrate decreases except drug severity level 4. The most significant decrease was identified at drug severity level 2 (-26.3%) followed by drug severity level 1 (-18.3%, page 64).

When examining the offenses of the drug incarceration sentences, 49.9% of the incarceration drug sentences were convictions of drug possession increasing by 4.2% over that of FY 2004 (45.7%). More than 91% of the drug possession sentences fell at drug severity level 4 representing an increase of 5% over that of FY 2004 (86.3%, page 17).

The trend analysis of the drug probation sentences in the past five years exhibits a growing tendency. The number of drug probation sentences increased by 13.8% compared with that of FY 2004 and significantly increased by 47.9% compared with that of FY 2001. The number of drug probation sentences at all levels increased except for drug level 2, which decreased by

54.5% compared with that of FY 2004 and decreased by 51.2% compared with that of FY 2001 (page 66). Further analysis on the types of offense reveals that drug possession sentences represented 65% of probation drug sentences in FY 2005 and approximately 71.4% of the probation drug sentences fell at drug severity level 4 (pages 25 & 28). This distribution of drug possession offenses and severity levels of the offenders on probation is very consistent with that of FY 2004.

During FY 2005, a total number of 1,105 sentences were imposed to SB 123 drug treatment programs, representing nearly 40% of the total drug probation sentences (2,777). Of these offenders, 80% were convicted of the crime of drug possession under K.S.A. 65-4160 and 19.3% were convicted of the crime of drug possession under K.S.A. 65-4162. The offenders at drug severity level 4 accounted for 99.5%. White male offenders were still the majority of the treatment sentences. The average age of the drug treatment offenders was 32 years old, which is the same with that of FY 2004. Johnson County imposed the most SB 123 drug treatment sentences (150) followed by Sedgwick (143), Saline (77), Reno (66), Shawnee (57) and Harvey (57) counties (pages 28 and 29).

## **VIOLATORS**

Condition violators admitted to prison during FY 2005 accounted for 68.3% of the total prison admission events of the fiscal year. Totaling 3,921, they include 1,783 probation violators, 2,109 parole/postrelease supervision violators, and 29 conditional release violators, indicating a decrease of 0.7% from that of FY 2004 (69%, page 32).

The trend analyses on the admission types of condition violators indicate that the decrease of condition violators primarily resulted from the decrease of parole/postrelease violators, who decreased by 6.4% compared with FY 2004. Conditional release violators, though small in number, decreased by 25.6% compared with those of FY 2004. Senate Bill 323, which has modified the periods of postrelease supervision and was passed into law in May 2000, continues its impact on the admission rate of condition violators returned to prison. However, the number of probation condition violators admitted to prison kept growing in FY 2005, which increased by 34.1% over that of FY 2001 representing the highest in the past five years (page 63).

When examining condition violators by gender, the analysis demonstrates that male condition violators sentenced to prison represented the largest number of offenses at severity level 7 of the nondrug grid and severity level 4 of the drug grid. However, females were most often revoked and placed in prison for condition violations of offenses designated at severity level 8 of the nondrug grid and severity level 4 of the drug grid (page 35). This severity level distribution pattern of condition violators is consistent with the findings observed in FY 2004.

In addition to the condition violators admitted to prison, 2,503 probation condition violators and 154 probation violators with new convictions were sentenced to either continued or extended probation for a violation during FY 2005. This represents 53.3% of the total number of 4,695 condition probation violators and 33% of the total number of 467 probation violators with new offenses (page 44). Compared with the data of FY 2004,

probation condition violators sentenced to continued or extended probation for a violation increased by 4.4% while probation violators with new convictions who had their probation sentence either continued or extended decreased by 18%.

## **CONFORMITY TO SENTENCING GUIDELINES**

The conformity rate of sentences imposed compared to that called for under sentencing guidelines is an important indicator to monitor the effectiveness of implementation of sentencing guidelines. The comparison of the actual sentence imposed to the sentence identified under the Sentencing Guidelines Act provides a measure of whether the designated sentence is viewed as appropriate. Under sentencing guidelines, departures may be imposed to sentence an offender to a sentence length or type that differs from the sentence set forth under the guidelines. Thus departures, whether durational or dispositional, serve as a measure of conformity.

A total number of 7,307 pure guideline sentences of FY 2005 were reviewed to determine conformity to the sentencing guidelines. Of this number, 1,345 were incarceration guideline sentences and 5,962 were probation sentences. Approximately 83% of the guideline sentences imposed fell within the designated guideline sentence range. Dispositional departures accounted for 11.9% of sentences and durational departures were found in 5.6% of sentences (page 47). The total conformity rates of FY 2005 remained very constant compared with those of FY 2004.

The analysis of presumptive prison sentences within guidelines displays that 39.5% of the sentences imposed fell within

the standard range of the grid cell; 10.6% of all sentences were within the aggravated range; 26.7% were within the mitigated range; and 23.2% were located within designated border boxes (page 48). This distribution of presumptive prison sentences does not fluctuate much compared with that of FY 2004.

The evaluation of durational departures of the incarceration guideline sentences reveals that almost 68% of the durational departures were designated as downward durational departures, while 32% indicated upward durational departures (page 48). The percentage of downward durational departures decreased by 6.1% compared with that of FY 2004.

When comparing durational departures between drug and nondrug incarceration sentences, the analysis indicates that 87.5% of drug durational departure sentences were downward compared to 55.1% for nondrug durational departure sentences (page 50). Downward durational departures were most frequently identified at severity levels 1 and 2 of the drug grid. Upward durational departures were found most frequently at severity levels 1, 2, 3 and 4 of the nondrug grid (page 52). This pattern of durational departures has remained fairly consistent over the past five years.

Dispositional departures are identified when the sentence imposed, prison or nonprison, is different from the sentence disposition designated under the sentencing guidelines. Upward dispositional departures are only applicable when prison sentences are imposed. When drug and nondrug sentences were compared, nondrug sentences indicated a 25.9% upward dispositional departure rate while drug sentences only represented a

5.5% upward dispositional departure rate (page 52).

The examination of probation guideline sentences indicates that, as expected, the majority (90%) of probation guideline sentences fell beneath the incarceration line, among which 85% fell within presumptive probation grids and 15% were within border boxes. Downward dispositional departure was only identified in 10% of the probation guideline sentences imposed (page 49).

Further analysis of downward dispositional departures of probation sentences discloses that drug sentences represented a higher percentage of downward dispositional departures than nondrug sentences (15.7% vs. 6.3%). More drug probation sentences resulted from border boxes than did nondrug probation sentences (26% vs. 4.7%, page 53).

## PRISON POPULATION FORECAST

Providing the state correctional facilities with annual prison population projections is one of the statutory tasks of the Kansas Sentencing Commission. Sentencing data from felony journal entries, prison admission files, inmate stock population files and release files are analyzed and programmed into a simulation projection model known as Prophet, which is used to forecast prison population over a ten-year projection period. The information of prison population projections is utilized by the Kansas Department of Corrections (KDOC) and various legislative committees in planning resource allocations, as well as policy development involving sentencing and other criminal justice related areas.

The prison population forecast projects that by the end of FY 2015, a total of 9,749

prison beds will be needed. This represents a total increase of 7.8% or 703 beds over the actual prison population at the close of FY 2005. Although the total number of admissions has dropped compared with those of the past five years, a combination of developing admission trends with the impact of the pronounced stacking effect has been resulting in a slow but continual growth in the state's prison population.

When looking into projected population at individual severity levels over the next ten years, the largest increase of projected prison beds is identified at drug severity level 4 (an increase of 33.7%), followed by nondrug severity level 1 (an increase of 23.8%) and nondrug severity level 3 (an increase of 12.7%). While the largest decrease of prison beds needed is found at drug severity level 1 (a decrease of 20%) and drug severity level 2 (a decrease of 22.4%). This decrease of drug population in prison reflects the penalty change resulting from Senate Bill 123 passed during the 2003 Legislative Session, which has enhanced penalties by diverting drug possession offenders to drug treatment programs rather than incarcerating them in prison (page 68).

In terms of types of prison beds needed for custody over the next ten years, custodial classification projections demonstrate that by the end of FY 2006, KDOC will need 3,046 minimum beds, 3,729 medium beds, 1,413 regular maximum beds, 230 unclassified beds and 748 beds for special management. By the end of FY 2015, the custodial beds in demand will include 3,189 minimum, 4,011 medium, 1,477 regular maximum, 251 unclassified and 821 special management beds (page 69). These projections assume no substantial change in the method or practice of custody decision making.

## **REPORT CONTENTS**

FY 2005 Annual Report is presented in four chapters. A descriptive statistical summary of statewide guideline sentencing practices in FY 2005 is illustrated in Chapter One.

Chapter Two describes the types and characteristics of violators incarcerated in correctional facilities. In Chapter Three, the pure prison and probation sentences imposed under the sentencing guidelines are examined to evaluate the conformity to the sentencing guidelines. Chapter Four contains analyses on sentencing trends and forecasts, including prison population and custody classification projections.

Appendix I analyzes sentences of felony convictions from the top four contributing counties of the state of Kansas. Appendix II tracks the trends of the top five felonies, UCR offenses, offgrid and nongrid crimes in the past five years. Female offenders are analyzed in this section as well.